IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5192 OF 2007

M/s.D.N.Engineering Works .. Petitioner

Vs.

Oil and Natural Gas Corporation Ltd. & Ors. .. Respondents

Mr.V.V.Pai and Mr.V.M.Bhate for the petitioner

Mr.Prakash Shinde i/b M/s.M.Dhruva and Co. for respondent no.1

CORAM : J.N.PATEL &
A.A.SAYED, JJ.

DATED : 8TH OCTOBER, 2007

P.C.:

1. The petitioner has approached this court seeking quashing and setting aside the letter dated 31st May, 2007 by virtue of which the contract assigned to the petitioner came to be terminated. The matter is contested by the respondents and we find that there are disputed question of facts and law which have been raised. The contract was

entered between the parties which is governed by the contract agreement which was part of the tender which contains a clause for Arbitration. Clause 35 clearly lays down that 'Except as otherwise provided elsewhere in the CONTRACT if any dispute, difference, question or disagreement arises between the parties hereto or the respective representatives or assignees, at any time in connection with construction, meaning, operation, effect, interpretation or out of the CONTRACT or breach thereof the same shall be referred to Arbitration of Sole Arbitrator appointed by the Director of ONGC This is applicable for indigenous contracts upto Rs.1 Crores.'

2. Therefore, this court is of the view that it will be appropriate that the petitioner lodges his claim to the Director of ONGC for referring it to the sole Arbitrator as per the scheme provided under Clause 35.

3. The learned counsel appearing for ONGC submits that the clause 35 is applicable only in case of Indigenous contracts and not otherwise.

Well, that is for the Director of ONGC to decide and that itself can be an issue in dispute arising between the parties.

4. The learned counsel for the petitioner submits that the petitioner would approach the Director of ONGC within two weeks from today and lodge his claim for referring the dispute to the sole arbitrator in accordance with the scheme laid down in clause 35 of the contract agreement. In case such a claim is lodged with the Director of ONGC, he would within a period of two weeks direct ONGC to take a decision in the matter within 4 weeks and communicate the same to the petitioner.

5. This court makes it clear that all the issues raised in the petition are kept open as this court has not dealt with the merits of the matter in view of the Arbitration clause. With these directions and observations, the petitioner is permitted to withdraw the petition. Petition stands disposed of as withdrawn.

(J.N. PATEL, J)

(A.A. SAYED, J)